

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEVIN GAMBLE,	:	
	:	
	Plaintiff, :	23 Civ. 6443 (LGS)
-against-	:	
	:	<u>ORDER</u>
ASSIS. COMMISSIONER CORT, et al.,	:	
	Defendants ..:	
	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, in a Report and Recommendation (the “Report”) dated September 18, 2024, Magistrate Judge Katharine H. Parker recommended that this case be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to follow court orders. No objection to the Report was filed.

WHEREAS, the recommendation in the Report was based on a finding that Plaintiff had failed to respond to Defendants’ discovery requests, failed to comply with the order granting Defendants’ motion to compel and repeatedly failed to appear at conferences before Judge Parker. Plaintiff was warned on March 18, 2024, on August 5, 2024, and on August 7, 2024, that continued failure to comply with court orders would result in sanctions or dismissal of the action. Plaintiff has also failed to file any documents since November 17, 2023.

WHEREAS, the recommendation in the Report also was based on an application of Federal Rule of Civil Procedure 41(b), which states that a court may dismiss an action “[f]or a failure of the plaintiff to prosecute or to comply with . . . any order of the court.” Fed. R. Civ. P. 41(b). The Report applies the relevant factors to recommend that dismissal of the action is warranted: (1) Plaintiff has failed to comply with court orders for three months, has failed to

attend two status conferences and has failed to comply with several orders, (2) Plaintiff has been explicitly warned three times that dismissal may occur, (3) Defendants will be prejudiced by further delay, (4) the Court will be unduly burdened by further delay and (5) dismissal and not a lesser sanction is appropriate because of the length and extent of Plaintiff's non-compliance and failure to respond. *See Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014) (listing factors); *accord Lopez v. 3662 Broadway Rest. Corp.*, No. 19 Civ. 975, 2023 WL 3847141, at *2 (S.D.N.Y. June 6, 2023).

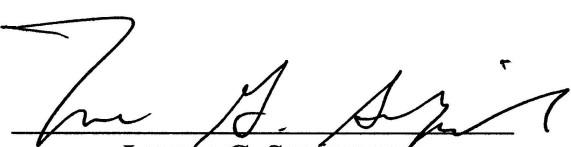
WHEREAS, in reviewing a magistrate judge's report and recommendation, a district judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "In a case such as this one, where no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Kuan v. Notoriety Grp. LLC*, No. 22 Civ. 1583, 2023 WL 3936749, at *1 (S.D.N.Y. June 9, 2023).

WHEREAS, the Court finds no clear error on the face of the record as to the Report. It is hereby

ORDERED and ADJUDGED that the Report is **ADOPTED**. This action is dismissed without prejudice for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b).

The Clerk of Court is respectfully directed to close the case and mail a copy of this Order to Plaintiff's last-known address.

Dated: October 7, 2024
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE